



Republic of the Philippines  
**SUPREME COURT**  
Manila

SECOND DIVISION

**G.R. No. L-58961 June 28, 1983**

**SOLEDAD SOCO**, petitioner,  
vs.

**HON. FRANCIS MILITANTE**, Incumbent Presiding Judge of the Court of First Instance of Cebu, Branch XII,  
Cebu City and **REGINO FRANCISCO, JR.**, respondents.

*Chua & Associates Law Office (collaborating counsel) and Andales, Andales & Associates Law Office for petitioner.*

*Francis M. Zosa for private respondent.*

**GUERRERO, J.:**

The decision subject of the present petition for review holds the view that there was substantial compliance with the requisites of consignation and so ruled in favor of private respondent, Regino Francisco, Jr., lessee of the building owned by petitioner lessor, Soledad Soco in the case for illegal detainer originally filed in the City Court of Cebu City, declaring the payments of the rentals valid and effective, dismissed the complaint and ordered the lessor to pay the lessee moral and exemplary damages in the amount of P10,000.00 and the further sum of P3,000.00 as attorney's fees.

We do not agree with the questioned decision. We hold that the essential requisites of a valid consignation must be complied with fully and strictly in accordance with the law, Articles 1256 to 1261, New Civil Code. That these Articles must be accorded a mandatory construction is clearly evident and plain from the very language of the codal provisions themselves which require absolute compliance with the essential requisites therein provided. Substantial compliance is not enough for that would render only a directory construction to the law. The use of the words "shall" and "must" which are imperative, operating to impose a duty which may be enforced, positively indicate that all the essential requisites of a valid consignation must be complied with. The Civil Code Articles expressly and explicitly direct what must be essentially done in order that consignation shall be valid and effectual. Thus, the law provides:

1257. In order that the consignation of the thing due may release the obligor, it *must first be announced* to the persons interested in the fulfillment of the obligation.

The consignation shall be ineffectual if it is not *made strictly in consonance* with the provisions which regulate payment.

Art. 1258. Consignation *shall be made* by depositing the things due at the disposal of judicial authority, before whom the tender of payment *shall be proved*, in a proper case, and the announcement of the consignation in other cases.

The consignation having been made, the interested parties *shall also be notified* thereof.

Art. 1249. The payment of debts in money *shall be made* in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents *shall produce* the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

In the meantime, the action derived from the original obligation shall be held in abeyance.

We have a long line of established precedents and doctrines that sustain the mandatory nature of the above provisions. The decision appealed from must, therefore, be reversed.

The antecedent facts are substantially recited in the decision under review, as follows:

It appears from the evidence that the plaintiff-appellee-Soco, for short-and the 'defendant-appellant-Francisco, for brevity- entered into a contract of lease on January 17, 1973, whereby Soco leased her commercial building and lot situated at Manalili Street, Cebu City, to Francisco for a monthly rental of P 800.00 for a period of 10 years renewable for another 10 years at the option of the lessee. The terms of the contract are embodied in the Contract of Lease (Exhibit "A" for Soco and Exhibit "2" for Francisco). It can readily be discerned from Exhibit "A" that paragraphs 10 and 11 appear to have been cancelled while in Exhibit "2" only paragraph 10 has been cancelled. Claiming that paragraph 11 of the Contract of Lease was in fact not part of the contract because it was cancelled, Soco filed Civil Case No. R-16261 in the Court of First Instance of Cebu seeking the annulment and/or reformation of the Contract of Lease. ...

Sometime before the filing of Civil Case No. R-16261 Francisco noticed that Soco did not anymore send her collector for the payment of rentals and at times there were payments made but no receipts were issued. This situation prompted Francisco to write Soco the letter dated February 7, 1975 (Exhibit "3") which the latter received as shown in Exhibit "3-A". After writing this letter, Francisco sent his payment for rentals by checks issued by the Commercial Bank and Trust Company. Obviously, these payments in checks were received because Soco admitted that prior to May, 1977, defendant had been religiously paying the rental. ....

1. The factual background setting of this case clearly indicates that soon after Soco learned that Francisco sub-leased a portion of the building to NACIDA, at a monthly rental of more than P3,000.00 which is definitely very much higher than what Francisco was paying to Soco under the Contract of Lease, the latter felt that she was on the losing end of the lease agreement so she tried to look for ways and means to terminate the contract. ...

In view of this alleged non-payment of rental of the leased premises beginning May, 1977, Soco through her lawyer sent a letter dated November 23, 1978 (Exhibit "B") to Francisco serving notice to the latter 'to vacate the premises leased.' In answer to this letter, Francisco through his lawyer informed Soco and her lawyer that all payments of rental due her were in fact paid by Commercial Bank and Trust Company through the Clerk of Court of the City Court of Cebu (Exhibit "1"). Despite this explanation, Soco filed this instant case of Illegal Detainer on January 8, 1979. ...

2. Pursuant to his letter dated February 7, 1975(Exhibit"3") and for reasons stated therein, Francisco paid his monthly rentals to Soco by issuing checks of the Commercial Bank and Trust Company where he had a checking account. On May 13, 1975, Francisco wrote the Vice-President of Comtrust, Cebu Branch (Exhibit "4") requesting the latter to issue checks to Soco in the amount of P 840.00 every 10th of the month, obviously for payment of his monthly rentals. This request of Francisco was complied with by Comtrust in its letter dated June 4, 1975 (Exhibit "5"). Obviously, these payments by checks through Comtrust were received by Soco from June, 1975 to April, 1977 because Soco admitted that an rentals due her were paid except the rentals beginning May, 1977. While Soco alleged in her direct examination that 'since May, 1977 he (meaning Francisco) stopped paying the monthly rentals'(TSN, Palicte, p. 6, Hearing of October 24, 1979), yet on cross examination she admitted that before the filing of her complaint in the instant case, she knew that payments for monthly rentals were deposited with the Clerk of Court except rentals for the months of May, June, July and August, 1977. ...

Pressing her point, Soco alleged that 'we personally demanded from Engr. Francisco for the months of May, June, July and August, but Engr. Francisco did not pay for the reason that he had no funds available at that time.' (TSN-Palicte, p. 28, Hearing October 24, 1979). This allegation of Soco is denied by Francisco because per his instructions, the Commercial Bank and Trust Company, Cebu Branch, in fact, issued checks in favor of Soco representing payments for monthly rentals for the months of May, June, July and August, 1977 as shown in Debit Memorandum issued by Comtrust as follows:

- (a) Exhibit "6"-Debit Memo dated May 11, 1977 for P926.10 as payment for May, 1977;
- (b) Exhibit"7"-Debit Memo dated June 15, 197 7for P926.10 as payment for June, 1977;
- (c) Exhibit "8"-Debit Memo dated July 11, 1977 for P1926.10 as payment for July, 1977;
- (d) Exhibit "9"-Debit Memo dated August 10, 1977 for P926. 10 as payment for August, 1977.

These payments are further bolstered by the certification issued by Comtrust dated October 29, 1979 (Exhibit "13"). Indeed the Court is convinced that payments for rentals for the months of May, June, July and August, 1977 were made by Francisco to Soco thru Comtrust and deposited with the Clerk of Court of the City Court of Cebu. There is no need to determine whether payments by consignment were made from September, 1977 up to the filing of the complaint in January, 1979 because as earlier stated Soco admitted that the rentals for these months were deposited with the Clerk of Court.

...

Taking into account the factual background setting of this case, the Court holds that there was in fact a tender of payment of the rentals made by Francisco to Soco through Comtrust and since these payments were not accepted by Soco evidently because of her intention to evict Francisco, by all means, culminating in the filing of Civil Case R-16261, Francisco was impelled to deposit the rentals with the Clerk of Court of the City Court of Cebu. Soco was notified of this deposit by virtue of the letter of Atty. Pampio Abarientos dated June 9, 1977 (Exhibit "10") and the letter of Atty. Pampio Abarientos dated July 6, 1977 (Exhibit " 12") as well as in the answer of Francisco in Civil Case R-16261 (Exhibit "14") particularly paragraph 7 of the Special and Affirmative Defenses. She was further notified of these payments by consignment in the letter of Atty. Menchavez dated November 28, 1978 (Exhibit " 1 "). There was therefore substantial compliance of the requisites of consignment, hence his payments were valid and effective. Consequently, Francisco cannot be ejected from the leased premises for non-payment of rentals. ...

As indicated earlier, the above decision of the Court of First Instance reversed the judgment of the City Court of Cebu, Branch 11, the dispositive portion of the latter reading as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff, ordering the defendant, Regino Francisco, Jr.:

(1) To vacate immediately the premises in question, consisting of a building located at Manalili St., Cebu City;

(2) To pay to the plaintiff the sum of P40,490.46 for the rentals, covering the period from May, 1977 to August, 1980, and starting with the month of September, 1980, to pay to the plaintiff for one (1) year a monthly rental of P 1,072.076 and an additional amount of 5 per cent of said amount, and for so much amount every month thereafter equivalent to the rental of the month of every preceding year plus 5 percent of same monthly rental until the defendant shall finally vacate said premises and possession thereof wholly restored to the plaintiff-all plus legal interest from date of filing of the complaint;

(3) To pay to the plaintiff the sum of P9,000.00 for attorney's fee;

(4) To pay to the plaintiff the sum of P5,000.00 for damages and incidental litigation expenses; and

(5) To pay the Costs.

SOORDERED.

Cebu City, Philippines, November 21, 1980.

(SGD.) PATERNO D.  
MONTESCLAROS  
Acting Presiding Judge

According to the findings of fact made by the City Court, the defendant Francisco had religiously paid to the plaintiff Soco the corresponding rentals according to the terms of the Least Contract while enjoying the leased premises until one day the plaintiff had to demand upon the defendant for the payment of the rentals for the month of May, 1977 and of the succeeding months. The plaintiff also demanded upon the defendant to vacate the premises and from that time he failed or refused to vacate his possession thereof; that beginning with the month of May, 1977 until at present, the defendant has not made valid payments of rentals to the plaintiff who, as a consequence, has not received any rental payment from the defendant or anybody else; that for the months of May to August, 1977, evidence shows that the plaintiff through her daughter, Teolita Soco and salesgirl, Vilma Arong, went to the office or residence of defendant at Sanciango St., Cebu City, on various occasions to effect payment of rentals but were unable to collect on account of the defendant's refusal to pay; that defendant contended that payments of rental thru checks for said four months were made to the plaintiff but the latter refused to accept them; that in 1975, defendant authorized the Commercial Bank and Trust Company to issue checks to the plaintiff chargeable against his bank account, for the payment of said rentals, and the delivery of said checks was coursed by the bank thru the messengerial services of the FAR Corporation, but the plaintiff refused to accept them and because of such refusal, defendant instructed said bank to make consignment with

the Clerk of Court of the City Court of Cebu as regard said rentals for May to August, 1977 and for subsequent months.

The City Court further found that there is no showing that the letter allegedly delivered to the plaintiff in May, 1977 by Filomeno Soon, messenger of the FAR Corporation contained cash money, check, money order, or any other form of note of value, hence there could never be any tender of payment, and even granting that there was, but plaintiff refused to accept it without any reason, still no consignment for May, 1977 rental could be considered in favor of the defendant unless evidence is presented to establish that he actually made rental deposit with the court in cash money and prior and subsequent to such deposit, he notified the plaintiff thereof.

Notwithstanding the contradictory findings of fact and the resulting opposite conclusions of law by the City Court and the Court of First Instance, both are agreed, however, that the case presents the issue of whether the lessee failed to pay the monthly rentals beginning May, 1977 up to the time the complaint for eviction was filed on January 8, 1979. This issue in turn revolves on whether the consignment of the rentals was valid or not to discharge effectively the lessee's obligation to pay the same. The City Court ruled that the consignment was not valid. The Court of First Instance, on the other hand, held that there was substantial compliance with the requisites of the law on consignment.

Let us examine the law and consider Our jurisprudence on the matter, aside from the codal provisions already cited herein.

According to Article 1256, New Civil Code, if the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignment of the thing or sum due. Consignation alone shall produce the same effect in the following cases: (1) When the creditor is absent or unknown, or does not appear at the place of payment; (2) When he is incapacitated to receive the payment at the time it is due; (3) When, without just cause, he refuses to give a receipt; (4) When two or more persons claim the same right to collect; (5) When the title of the obligation has been lost.

Consignation is the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment and it generally requires a prior tender of payment. (*Limkako vs. Teodoro*, 74 Phil. 313).

In order that consignation may be effective, the debtor must first comply with certain requirements prescribed by law. The debtor must show (1) that there was a debt due; (2) that the consignation of the obligation had been made because the creditor to whom tender of payment was made refused to accept it, or because he was absent or incapacitated, or because several persons claimed to be entitled to receive the amount due (Art. 1176, Civil Code); (3) that previous notice of the consignation had been given to the person interested in the performance of the obligation (Art. 1177, Civil Code); (4) that the amount due was placed at the disposal of the court (Art. 1178, Civil Code); and (5) that after the consignation had been made the person interested was notified thereof (Art. 1178, Civil Code). Failure in any of these requirements is enough ground to render a consignation ineffective. (*Jose Ponce de Leon vs. Santiago Syjuco, Inc.*, 90 Phil. 311).

Without the notice first announced to the persons interested in the fulfillment of the obligation, the consignation as a payment is void. (*Limkako vs. Teodoro*, 74 Phil. 313),

In order to be valid, the tender of payment must be made in lawful currency. While payment in check by the debtor may be acceptable as valid, if no prompt objection to said payment is made (*Desbarats vs. Vda. de Mortera*, L-4915, May 25, 1956) the fact that in previous years payment in check was accepted does not place its creditor in estoppel from requiring the debtor to pay his obligation in cash (*Sy vs. Eufemio*, L-10572, Sept. 30, 1958). Thus, the tender of a check to pay for an obligation is not a valid tender of payment thereof (*Desbarats vs. Vda. de Mortera*, supra). See Annotation, *The Mechanics of Consignation by Atty. S. Tabios*, 104 SCRA 174-179.

Tender of payment must be distinguished from consignation. Tender is the antecedent of consignation, that is, an act preparatory to the consignation, which is the principal, and from which are derived the immediate consequences which the debtor desires or seeks to obtain. Tender of payment may be extrajudicial, while consignation is necessarily judicial, and the priority of the first is the attempt to make a private settlement before proceeding to the solemnities of consignation. (8 Manresa 325).

Reviewing carefully the evidence presented by respondent lessee at the trial of the case to prove his compliance with all the requirements of a valid tender of payment and consignation and from which the respondent Judge based his conclusion that there was substantial compliance with the law on consignation, We note from the assailed decision hereinbefore quoted that these evidences are: Exhibit 10, the letter of Atty. Pampio Abarintos dated June 9, 1977; Exhibit 12, letter of Atty. Pampio Abarintos dated July 6, 1977; Exhibit 14, the Answer of respondent Francisco in Civil Case R- 16261, particularly paragraph 7 of the Special and Affirmative Defenses; and Exhibit 1, letter of Atty. Eric Menchavez dated November 28, 1978. All these evidences, according to respondent Judge, proved that petitioner lessor was notified of the deposit of the monthly rentals.

We have analyzed and scrutinized closely the above exhibits and We find that the respondent Judge's conclusion is manifestly wrong and based on misapprehension of facts. Thus-

(1) Exhibit 10 reads: (see p. 17, Records)

June 9, 1977

Miss Soledad Soco  
Soledad Soco Retazo  
P. Gullas St., Cebu City

Dear Miss Soco:

This is in connection with the payment of rental of my client, Engr. Regino Francisco, Jr., of your building situated at Manalili St., Cebu City.

It appears that twice you refused acceptance of the said payment made by my client.

It appears further that my client had called your office several times and left a message for you to get this payment of rental but until the present you have not sent somebody to get it.

In this connection, therefore, in behalf of my client, you are hereby requested to please get and claim the rental payment aforesated from the Office of my client at Tagalog Hotel and Restaurant, Sanciango St., Cebu City. within three (3) days from receipt hereof otherwise we would be constrained to make a consignment of the same with the Court in accordance with law.

Hoping for your cooperation on this matter, we remain.

Very truly yours,

(SGD.) PAMPIO A. ABARINTOS  
Counsel for Engr. REGINO FRANCISCO, Jr.

We may agree that the above exhibit proves tender of payment of the particular monthly rental referred to (the letter does not, however, indicate for what month and also the intention to deposit the rental with the court, which is the first notice. But certainly, it is no proof of tender of payment of other or subsequent monthly rentals. Neither is it proof that notice of the actual deposit or consignment was given to the lessor, which is the second notice required by law.

(2) Exhibit 12 (see p. 237, Records) states:

July 6, 1977

Miss Soledad Soco  
Soledad Soco Reta  
P. Gullas St., Cebu City

Dear Miss Soco:

This is to advise and inform you that my client, Engr. Regino Francisco, Jr., has consigned to you, through the Clerk of Court, City Court of Cebu, Cebu City, the total amount of P1,852.20, as evidenced by cashier's checks No. 478439 and 47907 issued by the Commercial Bank and Trust Company (CBTC) Cebu City Branch, dated May 11, 1977 and June 15, 1977 respectively and payable to your order, under Official Receipt No. 0436936 dated July 6, 1977.

This amount represents payment of the rental of your building situated at Manalili St., Cebu City which my client, Engr. Regino Francisco, Jr., is renting. You can withdraw the said amount from the Clerk of Court, City Court of Cebu, Cebu City at any time.

Please be further notified that all subsequent monthly rentals will be deposited to the Clerk of Court, City Court of Cebu, Cebu City.

Very truly yours,

(SGD.) PAMPIO A. ABARINTOS  
Counsel for ENGR. REGINO FRANCISCO, JR.

The above evidence is, of course, proof of notice to the lessor of the deposit or consignment of only *the two payments* by cashier's checks indicated therein. But surely, it does not prove any other deposit nor the notice thereof to the lessor. It is not even proof of the tender of payment that would have preceded the consignment.

(3) Exhibit 14, paragraph 7 of the Answer (see p. 246, Records) alleges:

7. That ever since, defendant had been religiously paying his rentals without any delay which, however, the plaintiff had in so many occasions refused to accept obviously in the hope that she may declare non-payment of rentals and claim it as a ground for the cancellation of the contract of lease. This, after seeing the improvements in the area which were effected, at no small expense by the defendant. To preserve defendant's rights and to show good faith in up to date payment of rentals, defendant had authorized his bank to issue regularly cashier's check in favor of the plaintiff as payment of rentals which the plaintiff had been accepting during the past years and even for the months of January up to May of this year, 1977 way past plaintiff's claim of lease expiration. For the months of June and July, however, plaintiff again started refusing to accept the payments in going back to her previous strategy which forced the defendant to consign his monthly rental with the City Clerk of Court and which is now the present state of affairs in so far as payment of rentals is concerned. These events only goes to show that the wily plaintiff had thought of this mischievous scheme only very recently and filed herein malicious and unfounded complaint.

The above exhibit which is lifted from Civil Case No. R-16261 between the parties for annulment of the lease contract, is self-serving. The statements therein are mere allegations of conclusions which are not evidentiary.

(4) Exhibit 1 (see p. 15, Records) is quoted thus:

November 28, 1978

Atty. Luis V. Diores  
Suite 504, SSS Bldg.  
Jones Avenue, Cebu City

Dear Compañero:

Your letter dated November 23, 1978 which was addressed to my client, Engr. Regino Francisco, Jr. has been referred to me for reply.

It is not true that my client has not paid the rentals as claimed in your letter. As a matter of fact, he has been religiously paying the rentals in advance. Payment was made by Commercial Bank and Trust Company to the Clerk of Court, Cebu City. Attached herewith is the receipt of payment made by him for the month of November, 1978 which is dated November 16, 1978.

You can check this up with the City Clerk of Court for satisfaction.

Regards.

(SGD.) ERIC MENCHAVEZ Counsel  
for Regino Francisco, Jr.  
377-B Junquera St., Cebu City  
(new address)

Again, Exhibit 1 merely proves rental deposit for the particular month of November, 1978 and no other. It is no proof of tender of payment to the lessor, not even proof of notice to consign. We hold that the best evidence of the rental deposits with the Clerk of Court are the official receipts issued by the Clerk of Court. These the respondent lessee utterly failed to present and produce during the trial of the case. As pointed out in petitioner's Memorandum, no single official receipt was presented in the trial court as nowhere in the formal offer of exhibits for lessee Francisco can a single official receipt of any deposit made be found (pp. 8-9, Memorandum for Petitioner; pp. 163-164, Records).

Summing up Our review of the above four (4) exhibits, We hold that the respondent lessee has utterly failed to prove the following requisites of a valid consignment: First, tender of payment of the monthly rentals to the lessor except that indicated in the June 9, 1977 Letter, Exhibit 10. In the original records of the case, We note that the certification, Exhibit 11 of Filemon Soon, messenger of the FAR Corporation, certifying that the letter of Soledad Soco sent last May 10 by Commercial Bank and Trust Co. was marked RTS (return to sender) for the reason that the addressee refused to receive it, was rejected by the court for being immaterial, irrelevant and impertinent per its Order dated November 20, 1980. (See p. 117, CFI Records).

Second, respondent lessee also failed to prove the first notice to the lessor prior to consignment, except the payment referred to in Exhibit 10.

In this connection, the purpose of the notice is in order to give the creditor an opportunity to reconsider his unjustified refusal and to accept payment thereby avoiding consignment and the subsequent litigation. This previous notice is essential to the validity of the consignment and its lack invalidates the same. (Cabanos vs. Calo, 104 Phil. 1058; Limkako vs. Teodoro, 74 Phil. 313).

There is no factual basis for the lower court's finding that the lessee had tendered payment of the monthly rentals, thru his bank, citing the lessee's letter (Exh. 4) requesting the bank to issue checks in favor of Soco in the amount of P840.00 every 10th of each month and to deduct the full amount and service fee from his current account, as well as Exhibit 5, letter of the Vice President agreeing with the request. But scrutinizing carefully Exhibit 4, this is what the lessee also wrote: "Please immediately notify us everytime you have the check ready so we may send somebody over to get it. " And this is exactly what the bank agreed: "Please be advised that we are in conformity to the above arrangement with the understanding that you shall send somebody over to pick up the cashier's check from us." (Exhibit 4, see p. 230, Original Records; Exhibit 5, p. 231, Original Records)

Evidently, from this arrangement, it was the lessee's duty to send someone to get the cashier's check from the bank and logically, the lessee has the obligation to make and tender the check to the lessor. This the lessee failed to do, which is fatal to his defense.

Third, respondent lessee likewise failed to prove the second notice, that is after consignment has been made, to the lessor except the consignment referred to in Exhibit 12 which are the cashier's check Nos. 478439 and 47907 CBTC dated May 11, 1977 and June 15, 1977 under Official Receipt No. 04369 dated July 6, 1977.

Respondent lessee, attempting to prove compliance with the requisites of valid consignment, presented the representative of the Commercial Bank and Trust Co., Edgar Ocañada, Bank Comptroller, who unfortunately belied respondent's claim. We quote below excerpts from his testimony, as follows:

ATTY. LUIS DIORES:

Q What month did you say you made ,you started making the deposit? When you first deposited the check to the Clerk of Court?

A The payment of cashier's check in favor of Miss Soledad Soco was coursed thru the City Clerk of Court from the letter of request by our client Regino Francisco, Jr., dated September 8, 1977. From that time on, based on his request, we delivered the check direct to the City Clerk of Court.

Q What date, what month was that, you first delivered the check to the Clerk of Court.?

A We started September 12, 1977.

Q September 1977 up to the present time, you delivered the cashier's check to the City Clerk of Court?

A Yes.

Q You were issued the receipts of those checks?

A Well, we have an acknowledgment letter to be signed by the one who received the check.

Q You mean you were issued, or you were not issued any official receipt? My question is whether you were issued any official receipt? So, were you issued, or you were not issued?

A We were not issued.

Q On September, 1977, after you deposited the manager's check for that month with the Clerk of Court, did you serve notice upon Soledad Soco that the deposit was made on such amount for the month of September, 1977 and now to the Clerk of Court? Did you or did you not?

A Well, we only act on something upon the request of our client.

Q Please answer my question. I know that you are acting upon instruction of your client. My question was-after you made the deposit of the manager's check whether or not you notified Soledad Soco that such manager's check was deposited in the Clerk of Court from the month of September, 1977?

A We are not bound to.

Q I am not asking whether you are bound to or not. I'masking whether you did or you did not?

A I did not.

Q Alright, for October, 1977, after having made a deposit for that particular month, did you notify Miss Soledad Soco that the deposit was in the Clerk of Court?

A No, we did not.

Q Now, on November, 1977, did you notify Soledad Soco that you deposited the manager's check to the City Clerk of Court for that month?

A I did not.

Q You did not also notify Soledad Soco for the month December, 1977, so also from January, February, March, April, May, June, July until December, 1978, you did not also notify Miss Soledad Soco all the deposits of the manager's check which you said you deposited with the Clerk of Court in every end of the month? So also from each and every month from January 1979 up to December 1979, you did not also serve notice upon Soledad Soco of the deposit in the Clerk of Court, is that correct?

A Yes.

Q So also in January 1980 up to this month 1980, you did not instructed by your client Mr. and Mrs. Regino Francisco, jr. to make also serve notice upon Soledad Soco of the Manager's check which you said you deposited to the Clerk of Court?

A I did not.

Q Now, you did not make such notices because you were not such notices after the deposits you made, is that correct?

A Yes, sir.

Q Now, from 1977, September up to the present time, before the deposit was made with the Clerk of Court, did you serve notice to Soledad Soco that a deposit was going to be made in each and every month?

A Not.

Q In other words, from September 1977 up to the present time, you did not notify Soledad Soco that you were going to make the deposit with the Clerk of Court, and you did not also notify Soledad Soco after the deposit was made, that a deposit has been made in each and every month during that period, is that correct?

A Yes

Q And the reason was because you were not instructed by Mr. and Mrs. Regino Francisco, Jr. that such notification should be made before the deposit and after the deposit was made, is that correct?

A No, I did not. (Testimony of Ocanada pp. 32-41, Hearing on June 3, 1980).

Recapitulating the above testimony of the Bank Comptroller, it is clear that the bank did not send notice to Soco that the checks will be deposited in consignment with the Clerk of Court (the first notice) and also, the bank did not send notice to Soco that the checks were in fact deposited (the second notice) because no instructions were given by its depositor, the lessee, to this effect, and this lack of notices started from September, 1977 to the time of the trial, that is June 3, 1980.

The reason for the notification to the persons interested in the fulfillment of the obligation after consignment had been made, which is separate and distinct from the notification which is made prior to the consignment, is stated in Cabanos vs. Calo, G.R. No. L-10927, October 30, 1958, 104 Phil. 1058. thus: "There should be notice to the creditor prior and after consignment as required by the Civil Code. The reason for this is obvious, namely, to enable the creditor to withdraw the goods or money deposited. Indeed, it would be unjust to make him suffer the

risk for any deterioration, depreciation or loss of such goods or money by reason of lack of knowledge of the consignment."

And the fourth requisite that respondent lessee failed to prove is the actual deposit or consignment of the monthly rentals except the two cashier's checks referred to in Exhibit 12. As indicated earlier, not a single copy of the official receipts issued by the Clerk of Court was presented at the trial of the case to prove the actual deposit or consignment. We find, however, reference to some 45 copies of official receipts issued by the Clerk of Court marked Annexes "B-1 " to "B-40" to the Motion for Reconsideration of the Order granting execution pending appeal filed by defendant Francisco in the City Court of Cebu (pp. 150-194, CFI Original Records) as well as in the Motion for Reconsideration of the CFI decision, filed by plaintiff lessor (pp. 39-50, Records, marked Annex "E ") the allegation that "there was no receipt at all showing that defendant Francisco has deposited with the Clerk of Court the monthly rentals corresponding to the months of May and June, 1977. And for the months of July and August, 1977, the rentals were only deposited with the Clerk of Court on 20 November 1979 (or more than two years later)."... The deposits of these monthly rentals for July and August, 1977 on 20 November 1979, is very significant because on 24 October 1979, plaintiff Soco had testified before the trial court that defendant had not paid the monthly rentals for these months. Thus, defendant had to make a hurried deposit on the following month to repair his failure. " (pp. 43-44, Records).

We have verified the truth of the above claim or allegation and We find that indeed, under Official Receipt No. 1697161Z, the rental deposit for August, 1977 in cashier's check No. 502782 dated 8-10-77 was deposited on November 20, 1979 (Annex "B-15", p. 169, Original CFI Records) and under Official Receipt No. 1697159Z, the rental deposit for July under Check No. 479647 was deposited on November 20, 1979 (Annex "B-16", p. 170, Original CFI Records). Indeed, these two rental deposits were made on November 20, 1979, two years late and after the filing of the complaint for illegal detainer.

The decision under review cites Exhibits 6, 7, 8 and 9, the Debit Memorandum issued by Comtrust Bank deducting the amounts of the checks therein indicated from the account of the lessee, to prove payment of the monthly rentals. But these Debit Memorandums are merely internal banking practices or office procedures involving the bank and its depositor which is not binding upon a third person such as the lessor. What is important is whether the checks were picked up by the lessee as per the arrangement indicated in Exhibits 4 and 5 wherein the lessee had to pick up the checks issued by CBTC or to send somebody to pick them up, and logically, for the lessee to tender the same to the lessor. On this vital point, the lessee miserably failed to present any proof that he complied with the arrangement.

We, therefore, find and rule that the lessee has failed to prove tender of payment except that in Exh. 10; he has failed to prove the first notice to the lessor prior to consignment except that given in Exh. 10; he has failed to prove the second notice after consignment except the two made in Exh. 12; and he has failed to pay the rentals for the months of July and August, 1977 as of the time the complaint was filed for the eviction of the lessee. We hold that the evidence is clear, competent and convincing showing that the lessee has violated the terms of the lease contract and he may, therefore, be judicially ejected.

The other matters raised in the appeal are of no moment. The motion to dismiss filed by respondent on the ground of "want of specific assignment of errors in the appellant's brief, or of page references to the records as required in Section 16(d) of Rule 46," is without merit. The petition itself has attached the decision sought to be reviewed. Both Petition and Memorandum of the petitioner contain the summary statement of facts; they discuss the essential requisites of a valid consignment; the erroneous conclusion of the respondent Judge in reversing the decision of the City Court, his grave abuse of discretion which, the petitioner argues, "has so far departed from the accepted and usual course of judicial proceeding in the matter of applying the law and jurisprudence on the matter." The Memorandum further cites other basis for petitioner's plea.

In Our mind, the errors in the appealed decision are sufficiently stated and assigned. Moreover, under Our rulings, We have stated that:

This Court is clothed with ample authority to review matters, even if they are not assigned as errors in the appeal, if it finds that their consideration is necessary in arriving at a just decision of the case. Also, an unassigned error closely related to an error properly assigned or upon which the determination of the questioned raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as an error." (Ortigas, Jr. vs. Lufthansa German Airlines, L-28773, June 30, 1975, 64 SCRA 610)

Under Section 5 of Rule 53, the appellate court is authorized to consider a plain error, although it was not specifically assigned by appellants." (Dilag vs. Heirs of Resurreccion, 76 Phil. 649)

Appellants need not make specific assignment of errors provided they discuss at length and assail in their brief the correctness of the trial court's findings regarding the matter. Said discussion warrants the appellate court to rule upon the point because it substantially complies with Section 7, Rule 51 of the Revised Rules of Court, intended merely to compel the appellant to specify the questions which

he wants to raise and be disposed of in his appeal. A clear discussion regarding an error allegedly committed by the trial court accomplishes the purpose of a particular assignment of error." (Cabrera vs. Belen, 95 Phil. 54; Miguel vs Court of Appeals, L- 20274, Oct. 30, 1969, 29 SCRA 760-773, cited in Moran, Comments on the Rules of Court, Vol. 11, 1970 ed., p. 534).

Pleadings as well as remedial laws should be construed liberally in order that the litigants may have ample opportunity to prove their respective claims, and that a possible denial of substantial justice, due to legal technicalities, may be avoided." (Concepcion, et al. vs. The Payatas Estate Improvement Co., Inc., 103 Phil. 10 17).

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the decision of the Court of First Instance of Cebu, 14th Judicial District, Branch XII is hereby REVERSED and SET ASIDE, and the derision of the City Court of Cebu, Branch II is hereby reinstated, with costs in favor of the petitioner.

SO ORDERED.

*Makasiar (Chairman), Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.*

*Aquino and Escolin JJ., concurs in the result,*

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